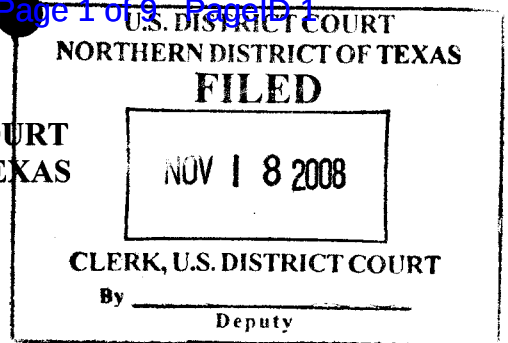


IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION



DAVID BOLTON

Plaintiff,

vs.

LOUISVILLE LADDER, INC. f/k/a  
LOUISVILLE LADDER GROUP, LLC

Defendants.

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NO. \_\_\_\_\_

**2-08CV-209-J**

COMPLAINT

Plaintiff, David Bolton ("Plaintiff" or "Mr. Bolton"), complaining of and about Louisville Ladder, Inc. f/k/a Louisville Ladder Group LLC ("Defendant" or "Louisville"), files his complaint against Defendant and, based upon personal knowledge or information and belief, alleges the following:

Parties and Service

1. Plaintiff, David Bolton, is an individual whose address is 1720 South Polk, #2, Amarillo, Potter County, Texas 79102.
2. Defendant, Louisville Ladder, Inc., is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 7719 National Turnpike, Building A, Louisville, Kentucky 40214-4803. Defendant is engaged in the business of manufacturing and selling ladders, more particularly, Model Number L-3211-06 (the "Ladder"), and placing those ladders within the stream of commerce within the State of Texas. Service of process may be effected upon this Defendant by serving its registered agent, CT Corporation System, 350 North St. Paul Street, Dallas, Dallas County, Texas 75201.

**Jurisdiction and Venue**

3. This Court has subject matter jurisdiction over this controversy pursuant to 28 U.S.C. § 1332(a)(1), as the amount in controversy exceeds \$75,000 and there is complete diversity of parties.

4. This Court has personal jurisdiction over Defendant as Defendant has purposefully availed itself to the opportunity to do business in the State of Texas. Furthermore, it is foreseeable, as a consequence of doing business in the State of Texas, that Defendant could be sued in the State of Texas.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2), as a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

**Facts**

6. The Ladder is a six foot fiberglass stepladder. The maximum weight suggested for use of the Ladder is two hundred twenty five (225) pounds.

7. On or about November 21, 2006, Mr. Bolton, who weighed approximately 195 pounds, was working on a demolition job at Lights Out Golf, a business located in Westgate Mall in Amarillo, Texas. At that time, Mr. Bolton was employed by Bolton-Gist Construction Company. The job involved a complete renovation of the site. At the time of the accident at issue in this case, Mr. Bolton was involved in tearing down walls. As part of this process Mr. Bolton was required to remove existing trim. In order to accomplish this task it was necessary for Mr. Bolton to use the Ladder. Mr. Bolton, who has been involved in the construction industry for almost thirty (30) years, has extensive experience with using ladders.

8. During the course of removing the trim, Mr. Bolton placed the Ladder under the trim he was removing. Mr. Bolton began climbing the Ladder by placing his right foot on the

first rung of the Ladder. He continued climbing the Ladder one rung at a time keeping his body positioned in the center of the Ladder. When he reached the third rung, Mr. Bolton spread his feet against the rails of the Ladder in order maintain a firm position. While standing in this position, Mr. Bolton was looking up to ascertain the positions of the screws that needed to be removed. As he began to lift his arms to perform this task, he felt the Ladder collapse on the right side, which caused Mr. Bolton to fall off and away from the Ladder.

9. As a result, Mr. Bolton suffered multiple severe injuries, including a fractured skull, severe fractures of both wrists and numerous bruises and contusions. As a result of these severe injuries, Mr. Bolton was admitted to Northwest Texas Hospital on November 21, 2006 where he stayed until December 5, 2006. After his release from Northwest Texas Hospital, he was transferred to Triumph Healthcare where he remained until February 5, 2007. He was subsequently transferred to Amarillo Nursing Center and was finally released on May 14, 2007. In all, Mr. Bolton spent almost six (6) months in care facilities as a result of the failure of the defective Ladder.

#### **COUNT 1**

##### **Strict Liability Against Louisville For The Faulty Design Of The Ladder**

10. Plaintiff incorporates, as though fully set forth, the allegations in paragraphs 1 through 9.

11. While engaged in the design, manufacture and sale of the Ladder, Louisville designed, manufactured, and sold the Ladder, and other like products, to consumers within the stream of commerce. Louisville intended and expected that the Ladder, so introduced and passed on in the course of trade, would ultimately reach a consumer or user in the condition in which it was originally sold.

12. The Ladder in question was defective and unreasonably dangerous at the time it left Louisville's possession, custody, and control, due to defects in the Ladder's design. The Ladder was defective in that it could not withstand Mr. Bolton's weight causing the legs and its supports to bend and collapse when he was engaged in the Ladder's anticipated use.

13. The Ladder was defectively designed so as to render it unreasonably dangerous to Mr. Bolton. A safer alternative design existed at the time the Ladder was manufactured. The safer alternative design would have prevented or significantly reduced the risk of Mr. Bolton's injuries, without substantially impairing the Ladder's utility. Furthermore, the safer alternative design was economically and technologically feasible at the time the Ladder left the control of Defendant by the application of existing or reasonably achievable scientific knowledge.

14. At the time the Ladder was delivered into Mr. Bolton's possession and at all times prior and subsequent to that time until the time of Mr. Bolton's injuries, the Ladder was in substantially the same condition as when it left Louisville's possession.

15. At the time Mr. Bolton was injured, he was using the Ladder in a manner reasonably anticipated and for the purposes for which the Ladder was intended.

16. The defect in the design was a producing cause of Mr. Bolton's injuries and damages set forth more fully below.

## **COUNT 2**

### **Strict Liability Against Louisville For Failure to Warn**

17. Plaintiff incorporates, as if fully set forth, the allegations in paragraphs 1 through 16.

18. While engaged in the design, manufacture and sale of the Ladder, Louisville designed, manufactured, and sold the Ladder, and other like products, to consumers within the

stream of commerce. Louisville intended and expected that the Ladder, so introduced and passed on in the course of trade, would ultimately reach a consumer or user in the condition in which it was originally sold.

19. A risk of harm is inherent in the Ladder or a risk of harm may arise from the Ladder's intended or reasonably anticipated use. Louisville knew or should have known about this risk of harm to the product's user when the Ladder was marketed. Louisville failed to warn its consumers of the defect and the defective condition in the design of the Ladder. The failure to warn of this defect, rendered the Ladder in an unreasonably dangerous condition at the time the Ladder left the possession, custody and control of Defendant.

20. Defendant's failure to warn of the defect in the Ladder was a producing cause of Mr. Bolton's injuries and damages set forth more fully below.

### **COUNT 3**

#### **Common Law Negligence**

21. Plaintiff incorporates, as if fully set forth, the allegations in paragraphs 1 through 20.

22. Louisville breached its legal duty of care in that Defendant was negligent in designing, manufacturing, assembling, testing, and/or inspecting the Ladder prior to delivery into the stream of commerce.

23. Louisville was negligent in failing to adequately instruct users of the Ladder on how to properly operate and maintain the Ladder to reduce the risk of serious injury or death from the use of the product.

24. Louisville's breaches of the legal duty of care was a proximate cause of Mr. Bolton's injuries and damages set forth more fully below.

**COUNT 4**

**Res Ipsa Loquitur**

25. Plaintiff incorporates, as if fully set forth, the allegations in paragraphs 1 through 24.

26. Plaintiff cannot more specifically allege the acts of negligence on the part of the Defendant because facts in that regard are peculiarly within the knowledge of Louisville. In the alternative, Plaintiff relies on the doctrine of *res ipsa loquitur*. In this regard, Plaintiff will show that the character of the occurrence giving rise to this lawsuit is such that it would not have happened in the absence of negligence, and that the Ladder was manufactured and designed within the exclusive control of Louisville. Thus, Louisville was negligent in failing to use ordinary care in the design and manufacture of the Ladder.

27. Louisville's negligence was a proximate cause of Mr. Bolton's injuries and damages set forth more fully below.

**COUNT 5**

**Breach of Implied Warranty of Merchantability**

28. Plaintiff incorporates, as if fully set forth, the allegations in paragraphs 1 through 27.

29. In addition, Louisville impliedly warranted to the public generally and specifically to Mr. Bolton, that the Ladder was of merchantable quality and was safe and fit for the purpose intended when used under ordinary circumstances and in an ordinary manner. Louisville was a merchant with respect to the Ladder and the Ladder was not merchantable as warranted because of the design and/or marketing defects.

30. Mr. Bolton suffered the injuries and damages set forth below as a proximate result of the breach of the foregoing warranties.

**Injuries and Damages**

31. Plaintiff incorporates, as if fully set forth, the allegations in paragraphs 1 through 30.

32. As a result of the events described above, Mr. Bolton has suffered severe and permanent personal injuries. As a result of these injuries, Mr. Bolton sustained a loss of earnings and earning capacity and will likely sustain future lost earnings and a loss of earning capacity. Mr. Bolton also experienced physical pain and mental anguish and will, in reasonable probability, continue to do so in the future by reason of the nature and severity of his injuries. Mr. Bolton also has been caused to incur medical charges and expenses in the past and will in reasonable probability continue to incur medical expenses in the future for treatment of his injuries. Mr. Bolton has also incurred physical impairment in the past and will, in reasonable probability, continue to do so in the future by reason of the nature and severity of his injuries.

**Jury Demand**

33. Plaintiff hereby demands trial by a jury on all claims asserted herein.

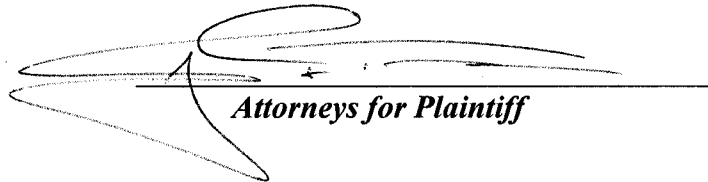
**PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff, David Bolton, respectively prays that the Defendant be cited to appear and answer herein, and that upon final hearing of the cause, judgment be entered for the Plaintiff and against Defendant for damages in an amount within the jurisdictional limits of the Court; together with pre-judgment interest at the maximum rate allowed by law; post-judgment interest at the legal rate; costs of court, including attorney's

fees; and for such other and further relief to which Plaintiff may show himself to be entitled, at law or in equity.

Respectfully submitted,

MULLIN HOARD & BROWN, L.L.P.  
John G. Turner, III, TSB #20320550  
Robert R. Bell, TSB #00787062  
Sarah D. Pelley, TSB #24058036  
P. O. Box 31656  
Amarillo, Texas 79120-1656  
(806) 372-5050  
(806) 371-6230 Facsimile



*Attorneys for Plaintiff*



## CIVIL COVER SHEET

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

David Bolton

(b) County of Residence of First Listed Plaintiff Potter  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Mullin Hoard & Brown, L.L.P., P.O. Box 31656, Amarillo, Texas,  
79120, (806) 372-5050

## DEFENDANTS

Louisville Ladder, Inc. f/k/a Louisville Ladder Group, LLC

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

Unknown

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                                       |   |                            |                            |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
|   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332(a)(1)

Brief description of cause:

Plaintiff injured when detective ladder manufactured by Defendant collapsed.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$ EXCESS** 75,000.00

CHECK YES only if demanded in complaint:  
**JURY DEMAND:** ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/18/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AM002115

AMOUNT

350.00

APPLYING IFP

JUDGE

MAG. JUDGE